

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

Christopher Evans and Lisa Evans,

Bankruptcy Case No.: 05-82195

Soc. Sec. Nos. xxx-xx-1243 & xxx-xx-5096

Mailing Address: 1207 Camden Avenue, Durham,
NC 27701-

Debtors.

Christopher Evans and Lisa Evans,

Plaintiffs, A.P. No.: _____

North Carolina Department of Revenue,

Defendant.

**COMPLAINT TO DETERMINE VALIDITY OF LIEN
AND FOR VIOLATION OF THE DISCHARGE INJUNCTION**

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1335(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the validity of an asserted tax lien held by North Carolina Department of Revenue.
3. The Plaintiffs are filed this bankruptcy case on August 2, 2005, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. That prior to the discharge granted in this case, the Plaintiffs were indebted to the North Carolina Department of Revenue. (Hereinafter referred to a "NCDR.")
5. That the NCDR filed a proof of claim in this case on January 4, 2006, asserting that the Debtors had an outstanding balance owed in the amount of \$39,008.28, consisting of \$12,161.82 as a general unsecured claim and \$26,846.46 as a priority unsecured claim.
6. That the claim of the NCDR was allowed as filed and paid the priority unsecured claim in full and a 25% dividend on its general unsecured claim.
7. That the Debtors received a discharge pursuant to 11 U.S.C. § 1328 on November 16, 2008.
8. That, subsequently, the NCDR has asserted that it holds a tax lien in an amount of \$10,120.41.

9. That this assertion is inconsistent with the Proof of Claim filed by the NCDR and should disallowed.
10. As such, the attempted assertion of a tax lien is in violation of 11 U.S.C. § 1328 and the discharged entered in the Debtors' case.
11. That the assertion of an improper tax lien by the NCDR is a willful violation of the Debtors' Discharge and Confirmation Orders and has substantially impaired the Debtors' discharge, resulting in continuing actual damages, including attorneys' fees.
12. That pursuant to *United Student Aid Funds, Inc. v. Espinosa*, --- S. Ct. ---, 2010 WL 1027825, 78 USLW 4207, 10 Cal. Daily Op. Serv. 3559, 22 Fla. L. Weekly Fed. S 173, U.S., March 23, 2010 (NO. 08-1134), the failure of the NCDR to object to the Confirmation Order and/or the Trustee's Report of Filed Claims, constituted an acceptance of the treatment of the NCDR's claim as an unsecured priority claim.
13. That pursuant to the doctrine of laches, the NCDR has neglected to assert its secured claim which, taken together with the lapse of time and other circumstances has caused prejudice to the Plaintiffs by both increasing the balance owed and depriving them of the ability to pay the secured value of any such claim through their prior Chapter 13 bankruptcy, should operate as a bar in equity against further assertion of a tax lien.
14. That the actions of the NCDR are willful.
15. That as a result of the actions of the NCDR, the Plaintiffs have incurred actual damages, including, without limitation, loss of time from work, delay in the ability to sell or refinance property, and attorneys' fees.

WHEREFORE, the Plaintiffs pray the Court find that said claim held by North Carolina Department of Revenue was satisfied in the course of the Plaintiffs' Chapter 13 case. The Plaintiffs further pray that the Court order North Carolina Department of Revenue to cancel the said tax lien forthwith, that the Court find that the NCDR violated the discharge injunction in this case, awarding actual and punitive damages, including attorneys fees, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: April 21, 2010

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
Edward Boltz
Attorney for the Plaintiffs
North Carolina State Bar No.: 23003
6616-203 Six Forks Road
Raleigh, N.C. 27615
(919) 847-9750